IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

DEVCON INTERNATIONAL CORPORATION, V.I. CEMENT & BUILDING PRODUCTS, INC., d/b/a MARK 21 INDUSTRIES, INC., d/b/a CONTROLLED CONCRETE PRODUCTS, INC., d/b/a SPRINGFIELD CRUSHER,	)	
Plaintiffs,	)	
v.	)	
RELIANCE INSURANCE COMPANY and THE VIRGIN ISLANDS INSURANCE GUARANTY ASSOCIATION,	)	
Defendants.	)	**Civil No. 2001-201**

ATTORNEYS:

James L. Hymes, III, Esq.
Maria T. Hodge, Esq.
Denise Francois, Esq.
St. Thomas, U.S.V.I.
For the plaintiffs.

Douglas L. Capdeville, Esq.
St. Croix, U.S.V.I.
For defendant Reliance Insurance Company.

Richard H. Hunter, Esq.
St. Croix, U.S.V.I.
For defendant The Virgin Islands Insurance Guaranty Association.

MEMORANDUM OPINION AND ORDER

GÓMEZ, C.J.

Before the Court is the motion of defendant the Virgin Islands Insurance Guaranty Association ("VIIGA") to certify a

final judgment for fewer than all parties pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

This action was initiated by plaintiffs Devcon International Corporation ("Devcon") and V.I. Cement & Building Products, Inc. ("V.I. Cement") (together, the "Plaintiffs") against their insurer, defendant Reliance Insurance Company ("Reliance"). The Plaintiffs sought a declaratory judgment and alleged breach of contract and misrepresentation. After the commencement of this action, Reliance was adjudicated to be insolvent by an Order of Liquidation of the Commonwealth Court of Pennsylvania.[1] Thereafter, the Plaintiffs filed their First Amended Complaint, adding as a defendant the Virgin Islands Insurance Guaranty Association ("VIIGA"), a Virgin Islands nonprofit unincorporated legal entity.[2] The First Amended Complaint added a claim for declaratory relief against VIIGA.

Pursuant to the Order of Liquidation, this Court granted Reliance's motion for an indefinite stay of this action.[3] That

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[1] *M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania v. Reliance Insurance Company*, No. 269 M.D. 2001.

[2] VIIGA exists pursuant to Chapter 10, Title 22 of the Virgin Islands Code. 22 V.I.C. § 237(a) provides that when an insurer becomes insolvent, VIIGA is deemed the insurer to the extent of the insurer's obligations, rights and duties on covered claims.

[3] (*See* Order, May 17, 2002.)

stay is still in effect.

The Plaintiffs sought a declaratory judgment defining the scope and nature of VIIGA's responsibilities to the Plaintiffs under the Plaintiffs' insurance policy for liabilities alleged in other litigation (the *"Antoine* Litigation"). Both parties moved for summary judgment. The Court denied the Plaintiffs' motion and granted VIIGA's motion.[4] The Plaintiffs thereafter moved for reconsideration of the Court's summary judgment opinion. That motion was denied. VIIGA now moves to certify the Court's summary judgment pursuant to Rule 54(b).

Rule 54(b) provides:

> When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED. R. CIV. P. 54(b).

VIIGA argues that because the Court's summary judgment is as to VIIGA, and does not include Reliance, "the action is not yet

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[4] (*See* Mem. Op. and Order, Oct. 23, 2007.)

terminated and judgment has not yet been properly entered in favor of [VIIGA].” (Mot. to Certify Final J. for Less Than All Parties Pursuant to Rule 54(b) 3.”)

The Plaintiffs correctly assert that under most circumstances their notice of appeal to the Third Circuit Court of Appeals would divest this Court of jurisdiction. *See In re Horn*, 185 Fed. Appx. 199, 202 (3d Cir. 2006). However, the Court is persuaded that it retains jurisdiction to certify a ruling under Rule 54(b) despite the filing of a notice of appeal. *See*, *e.g.*, *Sinaloa Lake Owners Ass’n v. California Div. of Safety of Dams*, Civ. No. 91-56352, 1993 U.S. App. LEXIS 11958, at *3-4 (9th Cir. May 17, 1993) (holding “that the district court retained the power to issue a Rule 54(b) certification despite the intervening filing of the notice of appeal”); *United States v. Hitchmon*, 602 F.2d 689, 693 (5th Cir. 1979) (“We are persuaded that filing a notice of appeal from a nonappealable order should not divest the district court of jurisdiction . . . .”).

Rule 54(b) “attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties.” *Allis-Chalmers Corp. v. Philadelphia Elec. Co.*, 521 F.2d 360, 363 (3d Cir. 1975); *see also Aetna Insurance Co. v. Newton*, 398 F.2d 729, 734 (3d Cir. 1968). The Supreme Court has

cautioned that "[f]inal judgment under this rule is not to be entered routinely," *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 10 (1980), and that the court must exercise its discretion "in the interests of sound judicial administration." *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956).

In order to enter final judgment, the court must first determine that it is "dealing with a final judgment." *Curtiss-Wright Corp.*, 446 U.S. at 7. It must be a "judgment" in the sense that it is a decision upon a cognizable claim for relief, and it must be "final" in the sense that it is the "ultimate disposition of an individual claim entered in the course of a multiple claims action." *Id.* Next, the court must determine whether there is any reason for delaying entry of final judgment. The court must balance the interests of "sound judicial administration" and the equities involved, i.e., justice to the litigants. *Curtiss-Wright*, 446 U.S. at 2; *see also Carter v. Philadelphia*, 181 F.3d 339, 346 (3d Cir. 1999); *Waldorf v. Shuta*, 142 F.3d 601, 608 (3d Cir. 1998).

The Third Circuit has endorsed the Second Circuit's guidance as to Rule 54(b) certifications:

> We suggest to the district courts that in the future it would be helpful to us in reviewing the exercise of discretion in granting a Rule 54(b) certificate if the court, rather than incorporating in the certificate [footnote omitted] the conclusory language of Rule

> 54(b), would make a brief reasoned statement in support of its determination that, 'there is no just reason for delay' and its express direction for 'the entry of a final judgment as to one or more but fewer than all of the claims or parties' where the justification for the certificate is not apparent. . . .

Allis-Chalmers Corp., 521 F.2d at 364 (quoting *Gumer v. Shearson, Hammill & Co., Inc.*, 516 F.2d 283, 286 (2d Cir. 1974)). Based on this reasoning, the Third Circuit has listed the following factors for a district court to evaluate in ascertaining the propriety of a Rule 54(b) certification:

> (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; 10 (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Id.

The Court finds that the circumstances of this case support certification of the Court's summary judgment as final under Rule 54(b). The Court's summary judgment is a "judgment" in the sense that it is a decision on various cognizable claims brought by the Plaintiffs for relief. It is "final" in the sense that it is an ultimate disposition of those claims, thus "end[ing] the litigation on the merits and leav[ing] nothing for the court to

do but execute the judgment." *See*, *e.g.*, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 275 (1988) (internal quotations omitted).

Furthermore, there is no just reason for delaying the entry of judgment with respect to the claims against VIIGA and Reliance because there are no further claims that remain to be adjudicated. In other words, "no appellate court would have to decide the same issues more than once even if there were subsequent appeals," since the plain language of the insurance policy between the Plaintiffs and Reliance determined the result of the Court's ruling. Thus, potential future appeals in this matter regarding any other claims will not involve similar legal issues. *See*, *e.g.*, *Am. Equip. Leasing v. McGee's Crane Rental*, Civ. No. 01-4783, 2002 U.S. Dist. LEXIS 24727, at *29 (E.D. Pa. Dec. 12, 2002).

Specifically applying the *Allis-Chalmers* criteria to this matter shows that (1) the declaratory judgment sought by the Plaintiffs against Reliance is exactly the same as that against VIIGA; (2) the other two claims brought by the Plaintiffs against Reliance - breach of contract and misrepresentation - are legally and factually separable from the declaratory judgment counts; (3) disposition on appeal of the matters adjudicated on summary judgment will eliminate all coverage issues as to the Plaintiffs

and will obviate the need for this Court to address this matter again; (4) there is little possibility that a reviewing court will have to hear this matter again because VIIGA's obligations under the insurance policy are identical to those of Reliance; (5) since VIIGA's favorable summary judgement motion fully removed it from any liability in the *Antoine* Litigation, no possibility exists that could result in a setoff against its liability or lack thereof; and (6) finally, a determination of the propriety of this Court's summary judgment decision will likely serve to clarify the Plaintiffs' liability in the *Antoine* Litigation. *See*, *e.g.*, *Chicago Ins. Co. v. Sampson*, 97-5514, 1999 U.S. Dist. LEXIS 13991, at *3-5 (E.D. Pa. Sept. 15, 1999), *aff'd* 230 F.3d 1348 (3d Cir. 2000); *Metro Transp. Co. v. Underwriters at Lloyd's of London*, Civ. No. 88-3325, 1990 U.S. Dist. LEXIS 8438, at *3-4 (E.D. Pa. July 3, 1990), *aff'd* 912 F.2d 672 (3d Cir. 1990).

Accordingly, the Court finds the entry of judgment on the claims between the Plaintiffs and VIIGA and Reliance to be in the interest of sound judicial administration.

For the reasons stated above, it is hereby

ORDERED that the Court's October 23, 2007 Memorandum Opinion

and Judgment are entered as a final judgment pursuant to Rule 54(b).

Dated: December 21, 2007 **S_____**
CURTIS V. GÓMEZ
Chief Judge

Copies to: Hon. Geoffrey W. Barnard
James L. Hymes, III, Esq.
Maria T. Hodge, Esq.
Denise Francois, Esq.
Douglas L. Capdeville, Esq.
Richard H. Hunter, Esq.
Carol C. Jackson
Olga Schneider
Lydia Trotman
Claudette Donovan
Gregory F. Laufer